Investigation and Prosecution Legal Issues

Investigations:

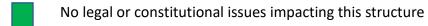
System Proposal	_	ie Level of	Legal Issue Notes
Current System – Independent Investigation Teams (IIT)	WAPA KLG AGO		
Separate Agency in Executive Branch (similar to Department of Social and Health Services, Washington State Patrol, Health Care Authority, etc.)	KLG	WAPA AGO	 WAPA: concern that a separate agency would usurp the authority of the Sheriff if the jurisdiction is exclusive rather than concurrent KLG: the legislature can create exclusive jurisdiction AGO: constitutionality of an investigation may not hinge on whether the investigator is named in the constitution, but rather whether the investigator is properly authorized to act on behalf of the state and whether the investigation is consistent with the 4th and 5th amendments.
Separate Agency NOT in Executive Branch	WAPA A	GO KLG	 WAPA: concern that a separate agency would usurp the authority of the Sheriff if the jurisdiction is exclusive rather than concurrent. Greater concerns with non-executive branch agency KLG: No clear authority on point AGO: Greater concerns with non-executive branch agency
Division within Attorney General's (AG) Office	KLG	WAPA AGO	 WAPA: concern that a separate agency would usurp the authority of the Sheriff if the jurisdiction is exclusive rather than concurrent WAPA: concern of potential conflicts arising from prosecution and investigation being housed in same agency Others believe this concern can be addressed AGO: Limited statutory authority: no original criminal jurisdiction, no commissioned peace officers
Division within Auditor's Office	WAPA KLG	AGO	 WAPA: concern that the Washington Constitution does not authorize the auditor to conduct criminal investigations Constitution confers authority only for financial matters. See State ex rel. Graham v. San Juan County, 102 Wn.2d 311, 686 P.2d 1073 (1984) WAPA concern that assigning this task to the auditor would usurp the authority of the Sheriff AGO did not examine this question
Division within Washington State Patrol	WAPA	AGO KLG	WAPA concern that this would usurp the authority of the Sheriff if the WSP were given exclusive rather than concurrent jurisdiction

Prosecutions:

System Proposal	Legal Issue Level of			Legal Issue Notes		
Current System – County Prosecuting Attorney has decision-making authority Separate Agency – Agency outside Prosecuting Attorney or Attorney General	WAPA KLG AGO	AGO	KLG	 WAPA states this is consistent with Washington Constitution KLG finds the PA does not have sole jurisdiction now and AG may sometimes overrule PA WAPA: concern that this would intrude upon the core functions of the county prosecuting attorney and cannot be accomplished without a constitutional amendment KLG: there are many agencies that do prosecution of cases using the AG now AGO: Greater concerns with non-executive branch agency. AGO: Concern is whether prosecutors are or can be 		
Attorney General – Transfer of primary prosecutorial decision- making authority to AG	KLG	Ī	WAPA AGO	 WAPA: concern that this would intrude upon the core functions of the county prosecuting attorney if the Attorney General's authority is exclusive and cannot be accomplished without a constitutional amendment AGO: This could possibly be challenged as taking away a core function of prosecutors but whether a court would agree is inconclusive. 		
Attorney General – Concurrent jurisdiction with county Prosecuting Attorney	WAPA KLG AGO			 WAPA: Consistent with Washington Constitution under limited circumstances – prosecuting attorney consent or Governor request when prosecuting attorney refuses to act WAPA: concern that any expansion beyond the two circumstances mentioned above would intrude upon the core functions of the county prosecuting attorney This view is not universally shared AGO: Currently, a prosecution may be concurrent at the request of the prosecuting attorney or the Governor. But these limits don't appear constitutionally required 		
Special Prosecutor – Designated by Legislature on individual cases or all cases	WAPA	AGO	KLG	 WAPA concern that this would intrude upon the core functions of the county prosecuting attorney and cannot be accomplished without a constitutional amendment KLG has not examined this issue AGO: If Legislature lack power to create an agency with criminal prosecutorial authority, then it would presumably also lack power to appoint an unelected special prosecutor 		

Special Prosecutor – Designated by Governor on individual cases	KLG	AGO	WAPA	 WAPA concern that this would intrude upon the core functions of the county prosecuting attorney and those of the attorney general and cannot be accomplished without a constitutional amendment AGO: If this was delegated to someone who already possesses the constitutional power to prosecute (county prosecutor or the AG) then presumably, the GOV would have the power to appoint a special prosecutor and his or her constitutional authority AGO: yellow only because the legality of this is untested
				in the courts

Key:



Potential legal or constitutional issues that may impact this structure

Potential legal or constitutional issues, potentially more significant issues than yellow

Legal or constitutional issues making this structure unadvisable

AGO = Attorney General

KLG = K&L Gates

WAPA = Washington Association of Prosecuting Attorneys